

# United States Senate

WASHINGTON, DC 20510

November 19, 2014

The Honorable John Koskinen  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Re: Immediate Small Business Relief Needed from Tangible Property Regulations

Dear Commissioner Koskinen:

We write to express our concern that several components of the Tangible Property Regulations (T.D. 9636) (“Repair Regulations”) unduly burden small businesses in our states and urge the IRS to provide taxpayers immediate relief from these compliance burdens. In particular, we encourage you to allow small businesses to comply with the Repair Regulations prospectively and raise the *de minimis* safe harbor to \$2500 from \$500.

The Repair Regulations, which became effective January 1, 2014, resolve several convoluted, longstanding compliance questions and provide simplification and IRS audit protection for small taxpayers. We appreciate the IRS’ effort; however, the requirement under the Repair Regulations for most businesses to analyze past expenditures related to tangible property imposes a significant, and unnecessary, human and financial cost on small businesses.

Generally, taxpayers are not required to preserve related records beyond the three years related to the statute of limitations, but an analysis mandated under the regulations may include expenditures from 2 years to 39 years (e.g., improvements made to a building). Gathering or reconstructing the necessary documents under the regulations – e.g., invoices, work orders, and receipts – may be quite difficult for many taxpayers because these documents may no longer exist. It is possible that taxpayers might have to recreate some of the documents from closed statute tax years just because of this single rule. The cost of the required prior year analysis could easily exceed the annual income tax return for many small businesses in our states.

Requiring taxpayers to reopen prior-year returns and records that were previously accepted by the IRS is unfair. Under normal circumstances, once the three year window for the IRS to audit a tax return has passed, the IRS should not require taxpayers to make changes to information from those years. We therefore urge you to eliminate this onerous prior year analysis and allow small businesses to comply with the Repair Regulations prospectively. Such prospective application would reduce both administrative and financial burdens substantially.

Additionally, the current *de minimis* safe harbor \$500 threshold for taxpayers without an applicable financial statement is too low to be effective or to achieve the desired burden-reducing result. While the \$500 threshold may be appropriate for some small businesses, many

entrepreneurs and farmers in our states have indicated that their common expenditures on tangible property often exceed the \$500 threshold. Simply put, the IRS should acknowledge that purchasing a component for a tractor is different from procuring simple office supplies and immediately increase in the threshold to \$2,500 to provide additional simplification.

As members of the Senate Small Business Committee, we understand that the federal government must cultivate a business environment that promotes growth — that means implementing tax regulations that have reasonable compliance burdens. Our offices have fielded many questions regarding the regulations, and we believe that many small businesses are unaware of, and unprepared to address, the transition burdens currently imposed by the regulations. The IRS should take action on this issue now, as taxpayers must complete the difficult and time-consuming analysis of prior-year expenditures before the end of the upcoming filing season. Therefore, we urge you to provide this needed relief for small businesses by eliminating the prior year analysis and increasing the *de minimis* safe harbor threshold to \$2,500.

Sincerely,



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Heidi Heitkamp  
U.S. Senator



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James Risch  
U.S. Senator